

TIPPECANOE COUNTY BOARD OF COMMISSIONERS
POOR RELIEF HEARING
MAY 24, 2006

The Tippecanoe County Commissioners met on Wednesday, May 24, 2006 at 9:00 A.M. in the Tippecanoe Room in the County Office Building. Commissioners present were: President John L. Knochel, Vice President Ruth E. Shedd, and Member KD Benson. Also present were: County Attorney David W. Luhman and Secretary Pauline E. Rohr. (Auditor Robert A. Plantenga was absent.)

POOR RELIEF HEARING: Elizabeth Dwenger, 3729 Amherst Dr., Lafayette vs Fairfield Township Trustee

President Knochel called the meeting to order and turned the proceedings over to Attorney Luhman who explained the procedure and conducted the swearing in of all witnesses:

Elizabeth Dwenger, 3729 Amherst Dr., Lafayette
A. J. Neskov, part-time Area IV worker
Fairfield Township Poor Relief Investigators Emily Brown and Kay Lewis
Fairfield Township Trustee Jerry Smelser

Ms Dwenger appeared to appeal the Township's denial of assistance for her Cinergy (electric) bill.

Fairfield Township Attorney Cy Gerde requested dismissal of the Ms Dwenger's appeal to the Commissioners due to its untimely filing. By Statute, Ms Dwenger had 15 days after the Township denied her request on April 14, 2006 to submit an appeal to the Commissioners, but she did not submit it until 26 days after the deadline on May 10, 2006.

Attorney Luhman commented it is his understanding that Ms Dwenger's appeal dated May 10, 2006 was received by the Commissioners' Office on May 12, 2006. Attached to the appeal was the Trustee's decision dated April 14, 2006.

Ms Dwenger said she received a call from Mr. Smelser, the Fairfield Township Trustee, who told her he would consider helping with part of her Cinergy bill if she agreed to come in weekly to receive budgeting help. She told him she would think about it and call him with her decision which she said she did on May 3rd. Ms Dwenger explained she didn't move forward with an appeal because she expected written notification telling her if they would help her or not after she rejected their budgeting help offer. On May 9, 2006, she said she spoke with Kay Lewis, Fairfield Township Poor Relief Investigator, who told her a second written notice of denial would not be issued. After consulting Legal Services, she wrote a letter to Mr. Smelser on May 10, 2006 regarding the non-issuance of a second written denial and stating she was proceeding with an appeal to the Commissioners.

Attorney Luhman explained it is up to the Commissioners if they want to act on the issue of the untimely filing now or proceed with the hearing and decide at on it at the conclusion of the hearing.

President Knochel said he recalled that a Commissioners' employee informed them that the appeal was received past the deadline but that Mr. Smelser had no objection if the Commissioners wanted to hear the appeal. He thought the Commissioners should act on the Trustee's request to dismiss before proceeding with a hearing.

Attorney Luhman stated that he reviewed the documents and the Statutes and it is clear that there must be a signed application and the Trustee is required to act and issue a decision to grant, deny or leave a decision pending within 72 hours after the application is filed. The Trustee did notify the applicant of the decision in writing dated April 14, 2006. The applicant then has 15 days from the written denial to file an appeal with the Commissioners. If the applicant does not comply, he said he doesn't believe the Commissioners have the jurisdiction to hear the appeal if it is after the required 15 days. Commissioner Benson asked if they can waive the requirement. Attorney Luhman responded he doesn't think the Commissioners can waive the 15 day requirement, and he thinks a condition of the appeal is that is timely filed with the Board of Commissioners.

President Knochel agreed with Attorney Luhman's findings.

When Commissioner Benson questioned the amount of response time for the Trustee, Attorney Luhman read the Statute:

IC 12-20-6-7

Action on application

Sec. 7. (a) In a case of emergency, a trustee shall accept and promptly act upon a completed application from an individual requesting assistance. In a nonemergency request for township assistance, the trustee shall act on the completed application not later than seventy-two (72) hours after receiving the application, excluding weekends and legal holidays listed in IC 1-1-9. The trustee's office shall retain a copy of each application and affidavit whether or not relief is granted.

(b) The actions that a trustee may take on a completed application for township assistance, except in a case of emergency, are the following:

- (1) Grant assistance.
- (2) Deny assistance, including a partial denial of assistance requested.
- (3) Leave the decision pending.

(c) A decision pending determination under subsection (b)(3):

- (1) may not remain pending for more than seventy-two (72) hours after the expiration of the period described in subsection (a); and
- (2) must include a statement listing the specific reasons that assistance is not granted or denied within the period required under subsection (a).

Commissioner Benson commented that the Trustee may not have complied with the Statute since from April 3rd to April 14th is more than 72 hours. Mr. Gerde responded the Trustee has 3 business days (72 hours) after all information for the application is received to make a decision to grant or deny.

Ms Dwenger did not contest the Trustee's dates but said she was waiting on a second denial or an affirmative answer from the Trustee before proceeding

Commissioner Shedd asked if a written notice is required after a phone call. Mr. Gerde responded it was not because the decision was already made. He referred to Exhibit F, a handwritten note by the Trustee, dated April 28, 2006 at 2:36 P.M. stating:

She left message on voice mail stating that she hasn't made a decision and will not be here on Monday. JRS

(She stated that she would call Wednesday to let us know what she decided).

Attorney Luhman asked if the Trustee's Office received a written application for assistance from Ms Dwenger after the April 14, 2006 denial notice. Mr. Gerde responded the Trustee did not.

Since so much time had already been spent on this preliminary matter and other matters were being discussed, Attorney Luhman suggested it might be helpful to the Commissioners to allow Ms Dwenger to explain why she wants this appeal and allow her to discuss her written communications with the Trustee. The Commissioners can then take the matter of whether the appeal was timely filed under advisement and decide that issue after hearing Ms Dwenger and the Trustee's response.

Recessed/Reconvened

Due to Ms Dwenger's request for a brief recess to confer with Ms Neskov, President Knochel recessed the meeting at 9:20 A.M. and reconvened at 9:25 A.M.

Ms Neskov explained that she works part-time during the winter months at Area IV but is not here today as their representative. While working at Area IV, she helped Ms Dwenger begin this process and is here today as moral support.

Ms Dwenger said she spoke with Indiana Legal Services a couple of times but they could not come here with her today because she is above their income guidelines. An attorney there did tell her he thought she should have gotten a second letter from the Trustee regarding her status after she turned down the budget sessions since Mr. Smelser did say he would give her some help if she participated. Ms Dwenger said she knows how to budget but she got behind in her payments due to heavy medical expenses over the past two years. In her opinion, her medication is as basic as electricity. She said Legal Services advised her to write a second letter to the Trustee concerning her appeal since she didn't receive a second letter from him. Although she dropped Medicare Part B as her secondary insurance due to the high premiums, she said she has resumed that coverage since her medical expenses far exceed the premium.

Ms Neskov interjected that Ms Dwenger thought she was filing the paperwork in a timely manner. She thinks there are extenuating circumstances in Ms Dwenger's case and she needs help, but she admitted Ms Dwenger made some bad decisions.

Mr. Gerde reviewed the Trustee's Exhibits A - G:

Ex A: Mr. Gerde verified with Ms Dwenger that her income is over \$2,000 per month which exceeds the Township's income standard of \$798 per month. Ms Dwenger said she was not made aware she was over the income guideline until she was denied.

Ex B: The current Cinergy bill amount due is \$2,242.72. Ms Dwenger didn't dispute Mr. Gerde when he said the records show that over \$1,500 of that amount has been owed for over two years. Mr. Gerde also noted that Cinergy's records show that only 6 payments have been made in the past two years and three of those, totaling \$520, were paid in 2006 by the Energy Assistance Program.

Ex C: Mr. Gerde said Cinergy's payment printouts show over \$1,500 is over two years late. He pointed out that only \$700 of the \$2,242.72 owed is eligible for assistance by the Trustee because the Township Standards prohibit paying bills over 2 years old.

Ex D: Mr. Gerde said this Household Budget Analysis, including bank records, from January 2005 through April 2006 shows Ms Dwenger paid bank charges totaling \$2,481 for NSF which is more than her Cinergy bill of \$2,242.72. Ms Dwenger countered that she never said she did everything correctly. Mr. Gerde pointed out that one of the reasons for her denial was wasted resources but Ms Dwenger refused budgeting help when it was offered. He said cooperation with the Trustee is another Township guideline. In his opinion, these are high bank charges that could have been paid toward her electric bill.

Ex E: This exhibit shows Ms Dwenger's bank records as well as records for Cash Advance which Mr. Gerde pointed out charges 385% interest. Mr. Gerde said the Trustee found hundreds of dollars in charges in addition to bank charges. Ms Dwenger defended using Cash Advance by saying that sometimes she has to rob Peter to pay Paul for medicine or other expenses.

Ex F: This is the voice mail message to the Trustee's Office at 2:36 P.M. on 4/28/06 stating:

She left message on voice mail stating that she hasn't made a decision and will not be here on Monday. JRS

(She stated that she would call Wednesday to let us know what she decided).

Ex G: This exhibit contains Notice of Poor Relief Action dated April 14, 2006, Appeal Rights and Procedure dated May 10, 2006, Ms Dwenger's letter to Mr. Smelser dated April 17, 2006, Ms Dwenger's second letter to Mr. Smelser dated May 10, 2006, and the letter from the Commissioners concerning the time and date of her appeal hearing dated May 17, 2006.

Summaries

Mr. Gerde summarized the Trustee found that Ms Dwenger earns almost three times the income guidelines, paid more in bank charges than her total electric bill, has wasted resources, and has shown no willingness to change her spending patterns.

Ms Dwenger said that, in her letter dated May 10, 2006, she asked Mr. Smelser to advise her of what she needed to do to proceed with her case but she received no response. Although Mr. Smelser wanted her to attend budget sessions, she said he gave her no specific time line. She felt like she needed specific times since she works five hours per week and may have as many as three medical appointments a week. She didn't deny she would be better off financially without the NSF fees and admitted she made some bad decisions. Ms Dwenger said she tried working with the Salvation Army but they told her they couldn't help unless the Trustee gives assistance.

Commissioner Benson established with Ms Dwenger that she received no other written response from the Trustee after the April 14, 2006 Notice of Poor Relief Action. She also confirmed with the Trustee that their current Standards are on file in the Commissioners' Office.

Attorney Luhman adjourned the meeting and stated the Commissioners will issue a written decision within five (5) days.

BOARD OF COMMISSIONERS OF THE COUNTY OF TIPPECANOE

John L. Knochel, President

Ruth E. Shedd, Vice President

KD Benson, Member

ATTEST:

Robert A. Plantenga, Auditor